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For the VIRGINIA GAZETTE &c.

LUCIAN, No. VI.

Mr. DAVIS,

HAVING now ſaid every thing, I conceive, that is neceſſary to be ſaid on the merits of the treaty itſelf, I ſhall conclude with a few obſervation on the ratification by the Preſident, which I ſhall confine entirely to conſtitutional ground, conſidering every thing elſe extraneous to, and only indicative of a bad cauſe, from which ever ſide it may come.

I have choſen the ratification of the treaty to bring in view the conſtitutional rights of the executive, becauſe, that being the only act by which any thing certain is to be aſcertained, nothing concluſive before being done, it affords a foundation not to be altered, without which concluſions might have been drawn from miſtaken, or at leaſt uncertain premiſes. With this conſideration in view, it may not be amiſs, to beſtow a ſlight retroſpective glance on the appointment, itſelf, of the ambaſſador, which is charged as the firſt conſtitutional breach by the executive on the ſubjects now before the public.

By the conſtitution "the Preſident has the power to nominate, and by and with the advice and conſent of the Senate to appoint ambaſſadors, other public miniſters and conſuls, judges of the ſupreme court, and all other officers of the United States, whoſe appointments are not" (in the ſaid conſtitution) "otherwiſe provided for, and which ſhall be eſtabliſhed by law." There is nothing in any part of the conſtitution itſelf, it appears which confines the Preſident and Senate, in thoſe appointments, to any particular claſs or deſcription of men. The objections then to this appointment were, 1ſt. That the perſon appointed was a judge of the ſupreme federal court, and of courſe could not exerciſe and perform the duties of the two appointments at once; and 2d. As chief juſtice, who, by the conſtitution, is to preſide on the trial of the Preſident, would be too much under his influence if he was thus armed with the means of charging him with too ſuch important and profitable offices at once.

Theſe, I confeſs, would be good arguments in favor of a reviſion and amendment to the conſtitution. They prove its imperfections in permitting things which will be productive of ſuch conſequences; but when we ſpeak of a violation of the conſtitution, *I have always underſtood*, we mean a thing in direct oppoſition thereto, and not a thing *warranted by it*. If there is nothing in the conſtitution itſelf, *as I believe there is not*, poſitively inhibiting the appointment of a judge to any other office, then the evils to be produced from his inability to diſcharge the duties of the two appointments, and the dependency it may give him on thoſe appointing, ariſe from the imperfections of the conſtitution itſelf, and not from a violation of it. A complaint of the violation of a thing implies a kind of perfection in the thing violated—a confeſſion that the effects to be expected from a ſtrict adherence to it were good; for we ſeldom complain of the contravention of what was to produce harm, but, of that which it is ſuppoſed, if adhered to, would have produced good. The evils complained of in the preſent caſe are the effects of certain acts. The violation of a conſtitutution is the act itſelf from which certain evills may ariſe. An appointment of a miniſter therefore to be both a violation of of the conſtitution, and a *non uſer* and *miſs-uſer* in office as is made of it beſides, is at once the cauſe and effect too, which is an impoſſibility in nature, though it is not ſo in ſome of our political *diſcernments*.

The conſtitutionality of an act, it is clear, is one thing, and the conſequences of that act, it is as clear, are another. To prove the one, nothing but the abſolute and plain oppoſing letter of the Conſtitution itſelf is admiſſible; and to argue from the other, without producing the firſt as the foundation of the conſequences, is to admit that no ſuch oppoſing letter does exiſt. The arguments then adduced, I ſay, go rather to prove the imperfection of the Conſtitution itſelf, than to eſtabliſh a violation of it in the preſent caſe. It is as conſiſtent however to charge the faults of things to men, as it is to condemn things for being made and advocated by particular men. Upon this mode of arguing then, which is at preſent the prevailing one, and upon this mode only, are the perſons of the executive chargeable with all the ſins of the conſtitution, one of which, appears to be, its ſilence about the appointment of a *judge* to any other office under the United States. "No ſenator or repreſentative," it is ſaid by the Conſtitution, "ſhall, during the time for which he is elected, be appointed to any civil office under the authority of the United States, which ſhall have been created, or the emoluments whereof ſhall have been encreaſed during ſuch time; and no perſon holding any office under the United States, ſhall be a member of either houſe during ſuch continuance in office." Theſe appear to be all the official diſqualifications and exclusions contained in the Conſtitution itſelf. A judge is therefore excluded from any other appointment but to the legiſlature, by the Conſtitution, however he may be by the fanciful imagination of ſome of our ingenious objectors.

Having premiſed thus much, curſorily then, on the appointment of the ambaſſador, I paſs on next to the conſtitutionality of the contents of the treaty itſelf; conſidering ſtill the whole a blank piece of paper until the executive *ſignate* had been affixed, and therefore admitting the ratification, as it is called, culpable in the fulleſt degree contended for by it. bittereſt enemies, for all the breaches which are in *reality* made on the Conſtitution by either the treaty or that act.

The Conſtitution of the United States declares (Art. 1. Sec. 8.) that "Congreſs ſhall have power" (among many other things) "to regulate commerce with foreign nations, and among the ſeveral ſtates, and with the Indian tribes;—To eſtabliſh an uniform rule of naturalization;—To define and puniſh piracies and felonies committed on the high ſeas, and offences againſt the law of nations;—To declare war, grant letters of marque and repriſal, and make rules concerning captures on land and water;"—And, in the reſtrictions upon Congreſs (9 Sec. of ſame Art.) It declares "no monies ſhall be drawn from the treaſury but in conſequence of appropriations made by law." Theſe are the parts of the Conſtitution, which it is ſaid, the treaty, made by the Executive, contravene. There was a time however when our *Conſtitutional objections* were of a very different complexion.

When the Conſtitution was under diſcuſſion in the different ſtates, for adoption or rejection, it was then ſaid by thoſe who oppoſed it, that the power veſted in the executive of making treaties, which treaties were to be the *ſupreme law of the land*, was to ruin us;—That under that *ſweeping clauſe* in the Conſtitution, as it was emphatically called, the Executive, under a pretence of making treaties, might make laws to bind us in all caſes whatever; in ſhort, that there was not a power contained in that Conſtitution or in the inclination of man that they had not a right to exerciſe. Now it is diſcovered that this *ſweeping clauſe* has no meaning, and that they have a right to do *nothing*. For if they have not a right to *regulate commerce with foreign nations*, to treat with foreign nations for the *naturalization* of their citizens in certain caſes, to *define and puniſh piracies and felonies committed on the high ſeas, and offences againſt the law of nations, make rules concerning captures on land and water, and engage to pay monies* where any foreign emergency requires it, on what ſubject, let me aſk, are they to *make treaties*, as the Conſtitution (Art. 2. Sec. 2.) allows them? And to what is this *ſweeping* clauſe now come, which thus declares thoſe treaties made by the Executive the *ſupreme law of the land*, if they are only to make treaties about *nothing*; for this is the literal amount of the powers of the Executive in *making treaties* now contended for.

The truth is, the right conſtruction of the Conſtitution, and the only reconciliation to thoſe contradictory powers of the Legiſlature and Executive, can no where be found, but between the two extremes. The Legiſlature under the powers veſted in that, and the Executive under their right to *make treaties*, have neither of them a right to do every thing, nor are thoſe powers given to them to do nothing.

The province of every Legiſlature, where there is an executive head, clearly lies within its own juriſdiction. It cannot certainly make laws to govern beyond thoſe limits. The power of *governing* always implies an authority at leaſt equal to the thing to be *governed*. Accordingly, the *ſupreme* or higheſt power in one nation is the only authority that can govern or regulate the head of another. It has ever been conſidered a condeſcenſion, to which no government has ever ſubmitted, to *treat* with any but the *ſupreme* power of foreign lands. Therefore, it has ever been underſtood, where there is an Executive head, that the ſole and only right, nay, that the only poſſible means of treating with foreign courts was thro' that head. The Legiſlature of courſe, through the neceſſity of ſubmitting to the law of nations, whatever may be the regulations of its own State, is compelled to confine its laws to the limits of that ſtate. Foreigners may be acquainted with the different branches of our government; but they can have nothing to do with defining and ſettling their relative powers, eſpecially when the true amount of ſuch powers is a matter of difficulty among ourſelves.

But what is the difficulty in the preſent caſe even among ourſelves?

I will firſt obſerve, that there is no Inſtrument or work of man in which perfection is to be found. It has therefore long been found neceſſary that ſome eſtabliſhed mode for reconciling contradictory things ſhould prevail. That mode, however, relates not to the difficulty of determining whether both or only one of thoſe contradictory things ſhould ſtand; but which of the two ſhould give way. On that particular point two rules of conſtruction have ever been obſerved. 1ſt. Where two claſhing powers ariſe, the law of nature has pointed out what reaſon has long ſince adopted and forever purſued, that the leſſer is to yield and give way to the greater. Treaties are by the Conſtitution itſelf and the neceſſity of the caſe the *paramount* law of the land. Conſequently the power of making them is ſuperior to all other powers. 2d. When two things equal in force and power come in oppoſition to one another, the rule of conſtruction then is, that the firſt ſhall yield and give way to the laſt: For inſtance, two laws made by the ſame authority, which counteract and deſtroy the effects of each other, cannot exiſt and operate together; the operation of the laſt then has always been conſidered a virtual repeal of the firſt. The ſame doctrine will apply ſtrictly in the preſent caſe.

The Conſtitution of the United States gives Congreſs the power, in the 8th Sec. of the 1ſt Art. as I have already ſhewn, of acting upon every ſubject that can poſſibly become the object of a treaty; and notwithſtanding, in the 6th Art. of the ſame inſtrument, the Preſident and Senate are intruſted with the ſole right of making treaties, which treaties, in a ſtill ſubſequent clauſe, are made the *ſupreme* law of the land.

This power therefore, I ſay, which is both *paramount* and *ſubſequent* to thoſe veſted in *Congreſs* (and which is rendered a mere nullity if the preſent conſtruction of that part of the Conſtitution contended for by the enemies to the treaty is maintained) neceſſarily operates a repeal or cancel of that part which defines the powers of the legiſlature, ſo far as thoſe powers go to eſtabliſh acts which are to have a foreign as well as a domeſtic foundation: And thence the only reconciliation to that contradictory part of the Conſtitution is to be found. The legiſlature (who by the nature of its powers and the pride of nations can only make laws to govern within the limits of its own territory) can no otherwiſe exerciſe thoſe authorities which are to affect foreign nations, than by the internal operation of its domeſtic laws. And ſo, on the other hand, the executive can only effect an internal operation (by their right to make treaties) through the diſtant ſprings of a foreign negociation. Thus the diſtinction between the idea of internal and foreign laws, relates only to the making, and not the operation of thoſe laws. As the legiſlature can only make internal, ſo the executive can only make external laws. We cannot, for inſtance, make treaties with ourſelves; and yet thoſe would be but inſipid and uſeleſs treaties indeed whoſe good effects were not to be internally felt. And if the good effects of treaties are to be acceptable with *(as the oppoſition to load ſeems itſelf to admit)* certainly the ſame rule will lead to an acquieſcence in their bad effects, when thoſe have been the neceſſary conſequence of obtaining the good. The *appropriations of monies* then, or any thing elſe which may be internally felt, can only be the domeſtic *effects* of a foreign cauſe, and not an aſſumption of legiſlative powers, which, *vice verſa*, can only have a domeſtic foundation, but which may have a foreign effect; for legiſlatures may ſo regulate their internal matters (by embargoes and other reſtrictions, provided thoſe regulations do not interfere with treaties) as to affect foreign affairs, but they cannot make laws to have an immediate and direct effect on thoſe affairs. The power who alone can *make treaties* can only act with ſuch immediate and direct effect. The executive, and not the legiſlature in America are the only hands by which treaties can be made. Take away that right, as the preſent conſtruction of the Conſtitution contended for will do, and there is an entire end to all American intercourſe with foreign nations. Even the right of making treaties with our *friends the French*, by that doctrine, during the continuance of our preſent government, is taken away, and all future intercourſe entirely cut off.

A treaty offenſive, as propoſed by the enemies of the preſent treaty, cannot be formed with that nation againſt the Britiſh, becauſe that would be to incur a conſiderable expence to America, and to engage the public *finances* to ſupport a war, is certainly as objectionable, as the objects of the preſent treaty, in engaging them to procure *peace*. A treaty cannot be formed with Spain for the navigation of the Miſſiſippi, becauſe that would be engaging *again* in *commercial regulations*: For no nation ever gives up ſomething for nothing; and the only return we could make to any power for that valuable acquiſition, would be, in the eſtabliſhment of a *commercial intercourſe* founded on reciprocal advantages. The only treaty that remains for America to make then, under the preſent conſtruction of the Conſtitution is, a treaty of peace; and a declaration of war being the province of the Houſe of Repreſentatives and Senate of Congreſs, and the concurrence of two thirds of the ſame Senate being neceſſary to form a treaty, the natural preſumption is, that we ſhould never have a treaty at all, until that Senate be brought to a change of ſentiment by America's being entirely exhauſted with war: And thus the power veſted in the Preſident and Senate of making treaties, with all its *mighty appendages* contained in the laſt clauſe of the Conſtitution, of making thoſe treaties the *ſupreme law of the land*, is at laſt brought to nought.

But let us for a moment examine this clauſe itſelf—"This Conſtitution, and the laws of the United States which ſhall be made in purſuance thereof; and all treaties made, or which ſhall be made, under the authority of the United States, ſhall be the ſupreme law of the land; and the judges in every ſtate ſhall be bound thereby; any thing in the Conſtitution or laws of any ſtate to the contrary notwithſtanding."

This clauſe of the Conſtitution is to be conſidered in two lights; 1ſt. as relating to the operation of the general government and all its laws over thoſe of the different ſtates and 2d. as relating to the different powers of the ge

government among themſelves. As relative to the Conſtitution and laws of the different ſtates, there can be no queſtion but that the "Conſtitution, the laws of the United States which ſhall be made in purſuance thereof, and all treaties made, &c. ſhall all be the *ſupreme* law of the land; but when applied to the relative powers of the general government among themſelves, the caſe is materially changed. It then only relates to treatics I conceive;—nor could the two different and diſtinct ideas have been otherwiſe expreſſed as coupled together in the ſame ſentence or clauſe of the Conſtitution.

Conſtitutions, it is to be obſerved, are always conſidered the *ſupreme* law of the land. They are paramount to the laws made under them, otherwiſe thoſe laws, which are always ſubſequent, might have a *repealing* effect. It could not have been intended then that the laws which were to be made under that Conſtitution ſhould be equal to the Conſtitution itſelf. The Conſtitution and the laws of every country are always conſidered and known to be the laws of that country, though only in a comparative ſenſe; and in that ſenſe the *judges* are always *bound thereby* without any particular charge. This however is not the caſe with *treaties*. They can only become the law of the land by the expreſs letter of the Conſtitution or the over-ruling prerogative of the executive head. * If by the expreſs letter of the Conſtitution, and not the prerogative of the chief magiſtrate or executive head, then it was neceſſary to charge the judges expreſsly therewith. It muſt follow then, in every rational ſenſe that this clauſe of the Conſtitution can be viewed, that it was the treaties and not the Conſtitution or the laws to be made under that Conſtitution, which were particularly contemplated in that part. So far as it can be conſtrued to relate to the Conſtitution itſelf, it muſt be conſidered as ſurpluſage at leaſt; and ſo far as relative to the laws to be made under that Conſtitution, as ſubverſive of the Conſtitution itſelf.

Taking it therefore in either ſenſe, it leaves an extenſive latitude to be given to the *right of making treaties*. If in the light of the common laws of the Union being equal to the Conſtitution itſelf, which was never meant, nor never can be ſuſtained by a real friend to our *conſtitutional rights*, then that *executive right* ſoars ſtill the higher above thoſe contradictions in the Conſtitution: For if the common laws are equal to the Conſtitution, and the treaties paramount to them, does not the right of making thoſe treaties riſe ſtill the higher above the ſtrength of thoſe contradictions in the Conſtitution? And if it be viewed only in the light of raiſing thoſe treaties above the interference of the common laws of the lands, which is ſurely the right view, then certainly muſt be let in that conſtructive preference, where contradiction lies, which I have already given to the power of *making treaties* over that of common legiſlative acts.

The treaty being conſtitutional in itſelf then, a very few obſervations may ſuffice in anſwer to the laſt method fallen on to get rid of it by *petitions* or remonſtrances to our Congreſſional repreſentatives, to take up the ſubject at their next meeting on thoſe conſtitutional grounds.

If the treaty is conſtitutional in itſelf, then there is an end to the pretence of interfering on that account: But even ſuppoſing the treaty unconſtitutional in itſelf, how extremely abſurd is the idea of getting rid of it in that way?—By the Conſtitution "Every Bill, Order, Reſolution, or Vote to which the concurrence of the Senate and Houſe of Repreſentatives may be neceſſary (except on a queſtion of adjournment) ſhall be preſented to the Preſident of the United States; and before the ſame ſhall take effect, ſhall be approved by him, or if diſapproved, returned with his objections to that houſe in which it ſhall have originated, who ſhall enter the objections at large on their journal, and proceed to conſider it. If after ſuch reconſideration, two thirds of that houſe ſhall agree to paſs the bill, it ſhall be ſent, together with the objections, to the other houſe, by which it ſhall likewiſe be reconſidered, and if approved by two thirds of that houſe, it ſhall then take effect, &c."

Two thirds of the Senate have already approved of the treaty; and the Preſident, it is ſaid, has ratified it. It is hardly to be preſumed then that two thirds of that ſame Senate will now join in a law, reſolution, or vote to condemn themſelves, or that the Preſident will affix his ſignature ſo as to require a bare majority to condemn himſelf. What good purpoſe a petition or remonſtrance is to anſwer on that head is therefore difficult to be ſeen. It may create much warmth and animoſity between the different branches of the government, which it does not require the art of prophecy to force, will not be attended with the moſt deſirable conſequences to America.

It is true they may fruſtrate ſome of the objects of the treaty by withholding the money neceſſary to carry thoſe parts into full effect; but whether the conſequences reſulting from ſuch violent conteſtations among ourſelves are not more ſeriouſly to be dreaded by every conſiderate man, than thoſe ariſing from the operation of the treaty itſelf, is a matter which ought ſeriouſly and carefully to be weighed in the fair ſcales of reaſon and ſound diſcretion before any ſuch ſteps are taken.

LUCIAN.

* *Under the old confederation treaties were not the* ſupreme *law of the land, as appears by the treaty of peace being ſo long contravened by the laws of ſome of the ſtates. And why? Becauſe they were neither declared ſo by the expreſs letter of the articles of confederation, nor made ſo by the ruling prerogative of America, there being no general executive head. Hence, clearly, reſulted this poſitive and unequivocal clauſe in the preſent Conſtitution.*

PHILADELPHIA, October 3.

AMERICAN APPEALS.

The following impo tant caſe of the Brigantine Betſey, W. Furlong, maſter, was heard and determined by the Lords Commiſſioners of appeals, on the 25th July, 1795.

From the ſhip's papers and depoſitions of the Captain and Crew, produced in evidence on this cauſe, it appears that the brigantine Betſey, belonging wholly to Mr. George Patterſon, of Baltimore, cleared out from this port on the 19th Dec. 1793, for the iſland of St. Bartholomew's, and a market. That in queſt of a market ſhe went directly to Guadaloupe, where ſhe arrived on the 8th of January following. Here ſhe diſcharged her cargo of proviſions, and took in one of Weſt-India produce. With this cargo ſhe proceeded to Baltimore, when ſhe was met and captured by the private ſloop of War, Agenoria, Willis Morgan, commander, and taken into Bermuda.

Her cargo conſiſted of ſugar, coffee, and other goods, belonging, in certain ſpecified proportions, to the Capt. William Furlong, and to Meſſrs. George and William Patterſon.

On the 4th April, 1794, proceedings on behalf of the captors were commenced. On the 23d April following, the veſſel was claimed by Captain Furlong, on behalf of Mr. George Patterſon, and the cargo on behalf of himſelf, a citizen of the United States, and of Meſſrs. George and William Patterſon, both alſo lawful citizens of the United States, and who had been for many years before reſident in Baltimore in the ſtate of Maryland, where their families and houſe of trade were. Mr. George Patterſon has been alledged to have been a native of Ireland—there is ſome doubt as to this fact—it is not contended, however, but that he was actually a citizen of the United States. It appears that he went over to guadaloupe for a ſpecial purpoſe, as the agent of his brother, and not with a view of reſiding there—on the contrary, that he propoſed returning without delay to Baltimore, as his place of reſidence.

On the 21ſt of May, 1794, the cauſe was bro't on for a hearing before John Green, Eſq. Judge of the Vice Admiral court of Bermuda; and on the 23d of ſaid month, the veſſel, with her "boat, tackle, apparel and furniture, and all and ſinguiar her cargo and lading, were adjudged and condemned as lawful prize to the captors by the ſaid judge; and the claimant, Capt Furlong, ordered and directed to pay the taxed coſts of ſuit."

The true ground of Judge Green's decree appears to have been according to his own words, becauſe "ſhe had come immediately from a French port, declared by authority to have been blockaded by his Britannic Majeſty's fleets and armies." It ſeems the "Authority" that "declared" the French Iſlands in a ſtate of blockade was Admiral Sir J. Jervis; and the evidence of this fact before the court was a copy of a letter from this officer to Thomas Griffith, Eſq. of Barbadoes, of which the following is an exact tranſcript:

"Boyne, in Fort Royal Bay, Martinico,
18th March, 1794.

"SIR,

"The ſeveral French Weſt-India Iſlands are to be conſidered as under blockade from the arrival of the armament at Barbadoes, the 6th of January; therefore all neutral veſſels trading with theſe Iſlands within that period, are clearly intended to come within the King's order in council, dated the 6th November, 1793.

"I am Sir,
"Your humble ſervant,
"Thomas Griffith Eſq. "J. JERVIS."

The veſſel and cargo condemned on the 23d of April, were delivered to the captors by order of the judge at an appraiſement of 4693l. 6s. 7d. Bermuda currency; which is ſtated to have been far below the actual value of the ſaid veſſel and cargo.

An appeal was immediately entered from this ſentence, and the claimants prayed the reſtitution of their property for the following reaſon, aſſigned by their Councel, Sir, William and Sir John Scott.

"Becauſe the ſhip and cargo were clearly indubitably the property of American ſubjects, engaged in a fair and licit trade."

On the part of the Captors, the reaſon aſſigned by their counſel, Mr. Erſkine and Dr. Nichoie, for the affirmance of the ſentence paſſed by the judge of the Vice Admiral court at Bermuda, were as follows:

"Becauſe the proprietors of ſhip and cargo are natural or Britiſh ſubjects, ſupplying the enemy with proviſion."

"Becauſe the veſſel, under a pretended deſtination to a neutral port, had gone directly to an enemy's port, then in a ſtate of blockade, and was returning from thence at the time of the capture, with a cargo, the produce of ſuch blockaded port, which ſhe had taken in barter for the cargo of proviſions ſhe had carried thither."

"Becauſe the ſole owner of the ſhip, and cargo, was at the time of the capture an inhabitant of the enemy's territory."

On Saturday, the 25th of July laſt, the Lords Commiſſioners of Appeals, heard Counſel in behalf of the appellant and reſpondent.

Sir William Scott on the part of the claimant and appellant, ſtated, that American ſhips in the time of peace, were in the conſtant practice of carrying flour and proviſions to the French Weſt-India Iſlands—It is true, that an order of Council was made on the 6th of November, 1793, and an inſtruction on it, directing all ſhips carrying ſupplies to, and bringing produce from the French Weſt-India Iſlands to be brought in for adjudication. But this order was never conſidered to extend to a condemnation, and it was revoked, and another inſtruction iſſued on the 8th of January, 1794.

Sir William Scott here referred to the caſes of the Fair Lady, the Hetty, the Liberty, and the Eſſex, as tending to eſtabliſh the free trade of the Americans to the French Weſt-India Iſlands.

Lord Mansfield expreſſed his doubts as to this broad aſſertion of Sir W. Scott—And

Sir W. Wynne called the attention of the board to the proclamation made by General Rochambeau, the Governor of Martinique, that he ſhould, under the circumſtances of the iſland permit the importation of proviſions for a limited time, but otherwiſe would adhere to the French Colonial laws.

Mr. Erſkine the reſpondent's counſel, agreed to argue the caſe on its particular circumſtances.

Sir W. Scott in continuation contended, that as to the blockade, the Britiſh arms had not inveſted the iſland, in a way to ſhew their intention to make it the primary object of their attack, at the time of the capture of this veſſel.

Sir John Jervis's letter introduced into the cauſe furniſhes no ſufficient ſuggeſtion to induce the court to concede the aſſertion of blockade to be well founded.

As to Mr. George Patterſon, the owner of the ſhip, and of a moiety of the cargo, it is contended that he is a native of Ireland, and the doctrine of inalienable allegiance, as it formerly ſtood, is ſet up as a bar to his claim.

The Independence of the American ſtates has done away that doctrine, as to all perſons, ſettled there at the time of ſuch Independence, and the great number of perſons who have emigrated to America ſince the Independence, will require a moſt ſerious conſideration before the doctrine will be applied to them.

Lord Preſident Mansfield, aſked Sir William Scott, if he meant to contend that an Engliſhman could get rid of his allegiance by going to America, more than he could by going to Ruſſia, or any other country in Europe?

Sir W. Scott declined the enquiry, but repeated his aſſertion that the magnitude of the queſtion from the number of perſons gone to America from this country, would require the moſt ſerious deliberation of this board, before the doctrine alluded to, was enforced to their prejudice.

The Maſter of the rolls obſerved, that the queſtion would probably require ſome underſtanding between the two countries.

Sir W. Scott proceeded; he remarked, that as to Mr. G. Patterſon's birth and reſidence, the third witneſs contradicts the other two, and ſays he believes Mr. Patterſon was born in America; ſo that the facts is not proved, and as to his reſidence, he appears to have gone to Guadaloupe on the preſent occaſion only, and to have had no reſidence there; and as to the clearing out for St. Bartholomew upon which much ſtreſs is laid—the fact is, the ſhip was cleared out for that Iſland, (which is Daniſh) and *for a market*.

Mr. Erſkine in reply declared he was more convinced than ever that he was founded in aſking for confirmation of the ſentence of condemnation, as it is evident that the urgent want of proviſions was the ſole inducement to let the ſhip take back the cargo of ſugar and coffee, without which ſhe could only have taken molaſſes.

He contended that the voyage may ſtrictly be conſidered as miſked, the Iſland of St. Bartholomew being a kind of emporium and the words "for a market," a mere cover, and as to the ſeizure of the cargo by the French, it is evident that the owner was ſo well reconciled to it as to talk of ſending a further cargo. He did not aſk for condemnation on the letter of Sir J. Jervis; he admitted the aſſertion of Sir W. Scott, as to its want of logical accuracy, ſelf-preſervation however was eſſential, and as much a principle with nations as with individuals, and the political exiſtence of this country juſtified his expectation of condemnation.

Martinique was then reduced, and Mr. Patterſon muſt have known it, and been well aſſured that Guadaloupe was an immediate object of the Britiſh arms.

America, he contended was entitled to no more and no leſs than other nations, and he had no doubt but that if Mr. Patterſon ſhould, on further enquiry, (if it ſhould be thought neceſſary to make it) appear to be a Britiſh ſubject by birth, his property would be liable to condemnation.

The council having cloſed their arguments, the Lords, viz. the Earl of Mansfield, Lord Preſident of the Council, Sir R. P. Arden, Knight, Maſter of the Rolls; Sir W. Wynne, Knight; Silveſter Douglas, Eſq. and Charles Greville, Eſq. took the ſame into conſideration, and made and declared their decree in the following words:

"The Lords having heard the proofs read, and advocates and proctors on both ſides, under all the the ſpecial circumſtances of the caſe, by their interlocutory decree, pronounced againſt the appeal, affirmed the ſentence appealed from, and remitted the cauſe."

(Signed) ARDEN,
Regiſteter of his Majeſty's High Court of Appeals for Prizes."

☞ NOTICE.

ALL perſons who have any demands againſt the eſtate of MAJOR POWER, dec. are hereby requeſted to bring them forward properly adjuſted for ſettlement on or before the twenty fifth day of December next, that they may receive payment. As the Executors are about to cloſe their executorſhip, all thoſe who ſhall fail to make known to the Executors their demands on or before the afore-mentioned day, will be preſted to take notice, that this advertiſement will be plead in bar againſt them.

ROBERT H. SAUNDERS, } Ex'ors.
DANIEL WADE. }

SEPTEMBER 15, 1795. (2w&s)

RICHMOND, Oct. 14.

IN COUNCIL, OCTOBER 8th, 1795.

THE Governor laid before the Board, Letters Patent, under the hand and Seal of the President of the United States, recognizing DON ANTONIO ARGOTE VILLALOBOS, as Vice Conful for his Catholic Majefty for the States of Virginia and Kentucky—Whereupon it is adviſed, that the ſame be publiſhed in the Virginia Gazette, for the information of the Citizens of this Commonwealth.

And the Governor Orders accordingly.

Atteſt,

A. BLAIR, C.C.

GEORGE WASHINGTON,

Preſident of the United States of America,

To all to whom it may Concern:

DON ANTONIO ARGOTE VILLALOBOS, having produced to me his Commiſſion as Conſul from his Catholic Majeſty for the States of Virginia and Kentucky; I do hereby recognize him as ſuch, and declare him free to exerciſe within the ſaid States, ſuch functions and powers as may be given or permitted by the laws of the land to the Conſuls of Nations, between whom and the United States no Treaty or Convention exiſts, for permitting ſpecific powers and functions to be exerciſed by their Conſuls reciprocally.

IN TESTIMONY whereof, I have cauſed theſe Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN under my hand at the City of Philadelphia, the Thirty-Firſt Day of January, in the Year of our Lord, One Thouſand Seven Hundred and Ninety-Five, and of the Independence of the United States of America the Nineteenth.

GO: WASHINGTON.

By the Preſident,

EDM: RANDOLPH

Richmond, 8th October, 1795.

Mr. PRINTER,

THE committee appointed to guard ſo far as may be practicable, againſt the introduction of any contagious or malignant diſeaſe into this city, feel it their duty immediately to contradict in the moſt deciſive manner a report which was not only unguardedly, but almoſt induſtriouſly circulated, that the yellow fever had made its appearance here, in the perſon of a Mr. Edgar, ſome time ſince from Norfolk. It is impoſſible for the committee to trace the cauſes from whence ſuch a report originated, or the motives which led to other fictions in order to ſupport the truth of it; but the fact is, that the gentleman who was with ſo much confidence ſaid to be yeſterday dying of that fever, was at the moment walking about free from complaint, though he had the preceding day had the common intermittent; and we are aſſured that no contagious fever under any denomination at preſent exiſts in this city.

We are, Sir, yours, &c.

DAVID LAMBERT.
JACOB I. COHEN.
WILLIAM RICHARDSON.

ANGERS. July 30.

Extract of a letter from Lemoine, General of Brigade, to General Hoche.

Head-Quarters, St. Pierre, July 23.

"Yeſterday two officers belonging to the Engliſh fleet requeſted an interview. The poſt ſtationed at the place where they attempted to land, ſent for me, and in the mean time ſuffered them to come on ſhore. When the meſſenger came up to me I was on horſeback, and accompanied by Generals Valiclaux and Drut, proceeded to the place, with the intention of requeſting them to re-embark, rather than of liſtening to any application they might make. What I ſaid to them was not very cordially received. They repaired in conſequence to their ſhip. After the orders which I propoſe giving, theſe gentlemen, I hope, will not again preſume to ſet their foot again on this iſland, with a view of conferring with us on ſubjects to which they ought to be convinced Frenchmen will never liſten.

"I have ſent you, according to daily cuſtom, the priſoners who, in the courſe of the night, were picked up by our parrales.

"The Commiſſaries of war, and all the agents of government, on the ſpot, are buſied in taking inventories of the captured ſtores and proviſions, which are ſo enormous and detached, that the taſk cannot be accompliſhed in leſs than a fortnight; indeed if they were collected in one magazine, I doubt exceedingly whether 4000 carts would be ſufficient to remove the proviſions alone, to a moderate diſtance, in the courſe of a month. A rough eſtimate has been made of their value, which exceeds 1800 millions of livres! This valuable acquiſition ought to be removed as ſoon as poſſible, to prevent ſpoiling.

"If we may judge of the object of the enemy from the ſtate of their magazines, it muſt have been conſidered of infinite moment, and may now be conſidered as the cloſing ſcene of the war, and the laſt deſperate effort of the emigrants. I wiſh you would come to the ſpot yourſelf, and ſure I am you would admit that my report is not exaggerated.

N. B. "we have among other things whole caſks of aſſignats. The volunteers amuſe themſelves in making bonfires of them. Several loads have been brought to me, which I believe are all that has eſcaped from the flames. They are fabricated with much art, that the difference between them and the real ones, is not to be diſtinguiſhed by a common obſerver. Tell me whether you think I ought to deſtroy them, or tranſmit them to the Repreſentatives of the people. None I am confident have got into circulation, ſo that neither our currency nor our territories ſhall be contaminated by the machinations of the enemy.

(Signed) LEMOINE."

"I pledge my ſelf for the veracity of the contents of the above letters. The diſaffected, I expect, will accuſe me of having made a wanton ſacrifice of men in gaining poſſeſſion of Fort Penthievre. To their calumnies I oppoſe facts, and refer them to the urgency of the occaſion and the fury of our opponents. How great ought to be your deſpair, vile enemies of your country! Since the 1ſt Meſſidor, the Republic has not loſt 200 men, and your friends have bitten the duſt.

(Signed) "L. HOCHE,
"General in Chief."

NEW-YORK OCTOBER 5.

Saturday arrived the ſhip South-Carolina, Capt. Sawyer, in 40 days from Havre-de-Grace. Capt. Sawyer has obligingly furniſhed us with the uſe of French Gazettes to the 21ſt of Auguſt; from which we ſhall occaſionally give extracts; the following article, tranſlated from *The Journal de Perlet*, of Auguſt 16th, we now lay before our readers—

"The American ſhip Aſtrea, loaded with ten thouſand quintals of corn, on the 17th of June, was met with by an Engliſh cutter, who thinking them bound to France, ſeized her and carried her to Dover, where the Captain went on ſhore for the verification of his papers. The ſecond, Capt. Daniel Williams, forgetting the danger to which he expoſed himſelf, thought only of the character of fraternity which unites both nations, and boldly undertook to return the precious cargo to the republic; in order to put that ſcheme into execution, a fair wind offering, he confined the prize-maſter and his gang, cut his cables, and ſailed for Havre-de-Grace.

"As ſoon as the commiſſary of marine and colonies was acquainted with that heroic deed, that preſence of mind, and that zeal, he informed the committee of public ſafety, who authorized him to give, in the name of the French government, a ſword to Daniel Williams, and to pay him for the loſs of his cables and anchors"

Here follows the letter written to him.

The Commiſſary of Marine and Colonies, to Capt Williams, at Havre.

"The commiſſion has informed the committee of public ſafety, with the ſervice you have done to the French republic by bringing over to one of her ports, the veſſel Aſtrea, with her precious cargo, taken away from the enemy, by an action which characterizes both your courage and deſire of being uſeful to a nation worthy of obtaining ſuch tokens of attachment from the true friends to liberty.—The organ of the French government, the commiſſion of marine and colonies, deſires you to accept in their name, of a ſword, on which are engraved theſe words,

"*The grateful Republic to Captain Williams, ſecond on board the Aſtrea.*"

"May that pledge of their eſteem acquit the ſacred debt which they have contracted with you. Health and fraternity."

The ſword was delivered to him by the adminiſtrators of Havre, in preſence of the Conſul of the United States, and the ſeveral officers of the ſhips of war. The moſt expreſſive gratitude was perceived in the countenance of Captain Daniel Williams, who had only in his power to aſſure the French Republic of his zeal and attachment to her intereſts.

BALTIMORE, Oct 5.

By Captain Clark, who arrived yeſterday in the ſhip Charleſton from Hamburg, and left Dover on the 19th of Auguſt, we have received poſitive information that GREAT-BRITAIN HAS DECLARED WAR AGAINST SPAIN, *on account of ſome ſecret articles in her treaty with France; that the Ruſſian fleet had arrived in the Downs, and were to have been joined by a Portugueſe ſquadron, who were on the point of leaving port, but their orders were countermanded at that moment, on account of the late rupture between England and Spain; that the Portugueſe ſquadron ſtationed in the Mediterranean, having gone into port, the Algerines had taken the advantage of the opportunity, and ſtretched out in the Atlantic, one of whom chaſed Captain Clark for a whole day—and laſtly, that the treaty between America and Great-Britain was ratified by the latter, and publiſhed, with the exception made in the 12th article by our Senate. We have not been ſo fortunate as to obtain the papers containing thoſe important articles, but every effort ſhall be made to give the details as ſoon as poſſible.* Fed. Intel.

NOTICE!

ALL perſons having demands againſt JOHN MAY, deceaſed, either for money due to them or contracts payable in lands, are requeſted to tranſmit to the ſubſcriber as ſoon as convenient, a copy of their demand or contract—All thoſe indebted to the ſaid JOHN MAY, dec. either for money due to him, or contracts for land purchaſed by him, or for locating lands in the ſtate of Kentucky, are requeſted to make payment, and to perform their ſpecific contracts and engagements immediately.—The ſaid deceaſed has by his laſt will and teſtament ſubjected his lands to the payment of his debts, and the ſubſcriber will make it the firſt object of his adminiſtration to provide for the ſame with as much diſpatch as the nature and circumſtances of the eſtate will admit of—and whereas the ſaid JOHN MAY met with a premature death, by the hands of the Indians on his paſſage down the Ohio, many papers and much information relative to his affairs periſhed with him, 'tis probable that the ſubſcriber will need the information of others in ſome matters relative to negociations of the deceaſed in the Weſtern Country, and he will thankfully receive any communications which gentlemen acquainted with the concerns of the deceaſed may think proper to make.

DAVID ROSS, Adminiſtrator.

Richmond, October 8, 1795. (3w)

I INTEND to leave this State in a ſhort time. WILLIAM SHERMER.

OCTOBER 8, 1795.

BY THE GOVERNOR OF THE COMMONWEALTH OF VIRGINIA,

A PROCLAMANION.

WHEREAS it appears, that the city of New-York is now unhappily afflicted with an Infectious and Malignant Fever, which, without due caution, may be brought into this Commonwealth by Veſſels arriving therefrom: I have thought proper by and with the advice of the Council, to call upon the Superintendants of Quarantine, of the different Ports of Entry and Delivery of this Commonwealth, to uſe every exertion on their part to prevent the introduction of ſo great a Calamity among the good People of this State. To effect which they are hereby particularly enjoined to demand of all Maſters of Veſſels coming from the ſaid City of New-York, the requiſite declaration of the State of Health of their reſpective Crews, &c. according to the law in that caſe made and provided: And if the reſult of ſuch enquiry ſhall ſatisfy the Superintendant of the Port which ſuch Veſſel may wiſh to make, that the Public Safety requires their performing Quarantine, he is hereby required to ſee that the ſame be done at the place heretofore appointed (convenient to the ſaid Port) for the ſpace of Twenty Days. And I do hereby moſt ſtrictly enjoin and require, that until ſuch Veſſels ſhall be diſcharged from their Quarantine, all perſons coming, or goods imported therein, come not on ſhore, or go on board any other Veſſel, or be landed or put on board any other veſſel whatſoever within this Commonwealth: And moreover that no Perſon or Perſons go on board any Veſſel ordered to perform Quarantine, in purſuance hereof, without permiſſion firſt had and obtained in writing from the ſaid Superintendants. And the ſaid Superintendants are hereby authoriſed to uſe the proper means of obtaining the moſt early and accurate information of the ſituation of all Veſſels coming from the ſaid City of New-York, with an intention of entering into any of the Ports, Rivers, or Harbors, within the juriſdiction of this State. And all Pilots are hereby required and enjoined to give notice unto ſome one of the ſaid Superintendants, of the arrival of all Veſſels from the ſaid City of New-York, and are inhibited from conducting the ſame into any of the Ports of this State until due examination is made as aforeſaid.

GIVEN under my hand, as Governor, and under the Seal of the Commonwealth, at Richmond, this Seventh Day of October, in the year of our Lord, One Thouſand Seven Hundred and Ninety-Five, and of the Commonwealth the Twentieth.

SEAL

R. BROOKE.

I FOREWARN all perſons from taking an aſſignment of my Note to John Garland for Thirty One Pounds, dated the 17th day of June 1795, to be paid ſo ſoon as it can be raiſed from the ſale of ſome wheat I purchaſed from him, for reaſons that the ſaid wheat has been ſince ſold by the Sheriff of Hanover, under executions againſt the ſaid Garland.

THOMAS AUSTIN.

September 19, 1795. (||)

A LIST of eight Hogſheads TOBACCO remaining in Johnſon's Warehouſe, as long as ſubjects them to be ſold if not claimed as the law directs.

Johnſon's Inſpection.

1793, June 18,	Wm. Haſkins, No.	1108	1352	148	1204
Aug. 2, Planters	R. M. H. I.	2	1143	1220	134 1086
name unknown	H. I.	1	1144	1310	133 1177

Rockey-Ridge Inſpection.

ditto,	632	1090	112	978
ditto,	107	1414	156	1258

Woodſon's Inſpection.

ditto, A. F.	171		120	1130
ditto,	425		123	993
ditto,	457		150	1384

GRAVES & GOODE, Inſpectors.

Will be Sold,

Before the Raleigh Tavern in Williamſburg, to the higheſt bidder, on Tueſday the 10th of November next, on ſix months credit for one half, and twelve months credit for the other half of the purchaſe money, all my property in the ſaid City, viz:—

THE large two ſtory BRICK HOUSE adjoining Mr. James Anderſon's, and on the corner of the main and croſs ſtreets, about two hundred yards from the Raleigh Tavern—and one moiety of the large Brick two ſtory HOUSE adjoining the abovementioned Tavern, with ſluth and dry cellars under both, and back ground, &c. belonging thereto: Bonds with approved ſecurity will be required, to carry intereſt from the date, if not punctually paid in the City of Richmond.

WILLIAM CARTER, Senior.

OCTOBER 12, 1795. (4ws)

N. B. The proprietor has ſubſcribed for the Inſurance of both Buildings. W. C. Sen.

FOR SALE,

A STOUT Likely HORSE, calculated for a Saddle or Carriage. Enquire of the Printer.

RICHMOND, Oct 12, 1795.

LOST,

THE KEY of an Iron Cheſt, whoever has found the ſame, will receive THREE DOLLARS reward by delivering it to the Printer.

from the NEW-YORK JOURNAL, *&c.*

THE DEFENCE.

No. XIII.

THE fourth and fifth articles of the treaty, from similarity of object will naturally be considered together. The fourth, reciting a doubt, "whether the river Miſſiſippi extends ſo far north Weſtward, as to be interſected by a line drawn due weſt from the lake of the woods, in the manner mentioned by the treaty of peace," agrees that meaſures ſhall be taken in concert between the two governments to make a joint ſurvey of that river, from a degree of latitude below the falls of St. Anthony, to the principal ſource or ſources thereof and of the parts adjacent thereto, and that if in the reſult it ſhould appear that the ſaid river would not be interſected by ſuch a line as above mentioned, the two parties will proceed by amicable negociation, to regulate the boundary line in the quarter as well as all other points to be adjuſted between them, according to juſtice and mutual convenience, and the intent of the treaty of peace. The fifth, reciting that doubts have ariſen, what river was truly intended under the name of the river St. Croix, mentioned in the treaty of peace, and forming a part of the boundary therein deſcribed, provides that the aſcertainment of the point ſhall be referred to three commiſſioners to be appointed thus: one to be named by his Britannic Majeſty, another by the Preſident of the United States, with the advice and conſent of the ſenate, the third by theſe two, if they can agree in their choices; but if they cannot agree, then each of them to name a perſon, and out of the perſons named one drawn by lot in their preſence to be the third commiſſioner. Theſe commiſſioners are to meet at Halifax, with powers to adjourn to any place or places they may think proper—are to be ſworn to examine and decide the queſtion according to the evidence which ſhall be laid before them by both parties—and are to pronounce their deciſion which is to be concluſive, by a written declaration under their hands and ſeals, containing a deſcription of the river and particularly the latitude and longitude of its mouth and of its ſource.

Theſe articles, though they have been adjuſted with critical propriety, have not eſcaped cenſure. They have even in one inſtance been ſeverely reprobated, as bringing into queſtion, things about which there was no room for any—and which a bare inſpection of the map was ſufficient to ſettle.

With regard to the Miſſiſippi, there is no ſatisfactory evidence that it has ever been explored to its ſource—It is even aſſerted, that it has never been aſcended beyond the 45th degree of north latitude, about a degree above the falls of St. Anthony.—*Fadeu's* map in 1793, will ſerve as a ſpecimen of the great uncertainty which attends this matter. It notes that the river had not been aſcended beyond the degree of latitude juſt mentioned, and exhibits three ſtreams, one connected with the *Marſhy Lake* in that latitude, another with the *White Bear Lake* near the 46th degree, and the third with the *Red Lake* in the 47th degree; denominating each of the two firſt, "the Miſſiſippi by conjecture," and the laſt, "Red Lake River, or Laboutan's Miſſiſippi,"—all of them falling conſiderably ſhort in their northern extent of the Lake of the Woods, which is placed as high as the fifthieth degree of North Latitude. Thus ſtands this very clear and certain point, which we are told it was diſgraceful on the part of our envoy to have ſuffered to be brought into queſtion.

There is however, a ſpecific topic of blame of the article which has greater plauſibility. It is this that it does not finally ſettle the queſtion, but refers the adjuſtment of the cloſing line to future negociation in caſe it ſhould turn out that the river does not ſtretch far enough north to be interſected by an eaſt and weſt line from the lake of the Woods. I anſwer, that the arrangement is preciſely ſuch as it ought to have been. It would have been premature to provide a ſubſtitute till it was aſcertained that it was neceſſary—A ſurvey is therefore provided for and will be made at the joint expence of the two countries.

That ſurvey will not only determine whether a ſubſtitute be requiſite or not, but it will furniſh data for judging what ſubſtitute is proper, and moſt conformable to the true intent of the treaty. Without the data which it will afford, any thing that could have been done, would have been too much a leap in the dark. National acts eſpecialy on the important ſubject of boundary, ought to be bottomed on a competent knowledge of circumſtances. It ought to be clearly underſtood how much is retained, how much is relinquiſhed. Had our envoy proceeded on a different principle, if what he had agreed to had turned out well, it would have been regarded as the lucky reſult of an act of ſupererogation—if it had proved diſadvantageous, it would have been ſtigmatized as an act of improvidence and imprudence.

The ſtrong argument for having ſettled an alternative is the avoiding of future diſpute. But what alternative could have been agreed upon, which might not have bred controverſy? the cloſing line muſt go directly or indirectly to the Miſſiſippi—which of the ſtreams reputed or conjectured to be ſuch, above the falls of St. Anthony, is beſt entitled to be ſo conſidered? to what known point was the line to be directed? how was that point to be indentified with adequate certainty? the difficulty of anſwering theſe queſtions will evince, that the danger of controverſy might have been encreaſed by an impatience to avoid it, and by anticipating, without the neceſſary lights, an adjuſtment which they ought to direct.

The facts with regard to the river St. Croix, are theſe—the queſtion is, which of the two rivers is the true St. Croix. The diſpute concerning it is as old as the French poſſeſſion of Nova Scotia.—France ſet up one river, Great-Britain another.—The point was undecided when the ſurrender of Nova Scotia by the former to the latter, put an end to the queſtion as between thoſe parties—it was afterwards renewed between the Colonies of Nova Scotia and Maſſachuſetts bay, which laſt, in the year 1762, appointed commiſſioners to aſcertain, in conjuction with commiſſioners which might be appointed by the province of Nova Scotia, the true river, but no final ſettlement of the matter enſued.

The treaty of peace gives us for one boundary, the river St. Croix, but without deſigning it.—Hence it has happened, that not long after the peace was concluded, the queſtion which had before been agitated between France and Great Britain, and between the provinces of Maſſachuſetts and Nova Scotia was revived between the ſtate of Maſſachuſetts and that province, and it has ever ſince continued a ſubject of debate.

A mode of ſettling the diſpute was under the conſideration of congreſs in the year 1785, and powers were given to our then miniſter at the court of London, to adjuſt the affair, but nothing was concluded. And we learn from a letter of Mr. Jefferſon to Mr. Hammond, dated the 15th December, 1791, that it then alſo, engaged the attention of our government; that the aſcertaining of the point in diſpute was deemed a matter of "preſent urgency," and that it had before been the ſubject of application from the United States to the government of Great-Britain.

It is natural to ſuppoſe, that a diſpute of ſuch antiquity, between ſuch different parties, is not without colorable foundation on either ſide; at any rate, it was eſſential to the preſervation of peace that it ſhould be adjuſted.

If one party could not convince the other by argument of the ſuperior ſolidity of its pretenſions, I know of no other alternative but *arbitration* or *war*. Will any one pretend that honor required us in ſuch a caſe to go to war, or that the object was of a nature to make it our intereſt to refer it to that ſolemn, calamitous, and precarious iſſue? No rational man will anſwer this queſtion in the affirmative. It follows that an arbitration was the proper courſe, and that our envoy acted rightly in acceding to this expedient. It is one too, not without precedents among nations, though it were to be wiſhed, for the credit of human moderation, that they were more frequent.

Is there any good objection to the mode of the arbitration? It ſeems impoſſible that any one more fair or convenient could have been deviſed, and it is recommend by its analogy to what is common among individuals.

What the mode is, has been already detailed, and need not be repeated here. It is objected that too much has been left to chance, but no ſubſtitute has been offered which would have been attended with leſs caſualty. The fact is, that none ſuch can be offered—Conſcious of this, thoſe who make the objection have not thought fit to give an opportunity of compariſon by propoſing a ſubſtitute. What is left to chance? Not that there ſhall be a final deciſion; for this is moſt effectually provided for. It is not only poſitively ſtipulated that commiſſioners, with full and definitive power, ſhall be appointed, but an ultimate choice is ſecured, by referring, in the laſt reſort, to a deciſion *by lot*, what it might not be practicable to decide by agreement. This is the *ne plus ultra* of precaution. Is it that this reference to lot leaves it too uncertain of what character or diſpoſition the third commiſſioner may be? If this be not rather a recommendation of the the fairneſs of the plan, how was it to be remedied? Could it have been expected of either of the parties, to leave the nomination to the other? Certainly not. Would it have been adviſable to have referred the ultimate choice to ſome other ſtate or government? Where would one have been found, in the opinion of both parties, ſufficiently impartial? On which ſide would there have been the greateſt danger of a ſucceſsful employment of undue influence? Is it not evident, that this expedient would have added to equal uncertainty, as to character and diſpoſition, other caſualties and more delay? Should it have been left to the two commiſſioners, appointed by the parties to agree at all events? It might have been impoſſible for them to come to an agreement, and then the whole plan of ſettlement would have been fruſtrated. Would the ſword have been a more certain arbiter? Of all uncertain things, the iſſues of war are the moſt uncertain. What do objections of this kind prove, but that there are perſons reſolved to object at all events?

The ſubmiſſion of this queſtion to arbitration has been repreſented as an eventual diſmemberment of empire, which it has been ſaid, cannot rightly be agreed to, but in a caſe of extreme neceſſity. This rule of extreme neceſſity is manifeſtly only applicable to a ceſſion or relinquiſhment of a part of a country, held by a clear and acknowledged title; not to a caſe of diſputed boundary.

It would be a horrid and deſtructive principle, that nations could not terminate a diſpute about the title to a particular parcel of territory, by amicable agreement, or by ſubmiſſion to arbitration as its ſubſtitute; but would be under an indiſpenſible obligation to proſecute the diſpute by arms, till real danger to the exiſtence of one of the parties ſhould juſtify, by the plea of extreme neceſſity, a ſurrender of its pretenſions.

Beſides, the terms in which writers lay down the rule, and the reaſon of it will inſtruct us that where it does apply, it relates not to territory as ſuch, but to thoſe who inhabit; on the principle that the ſocial compact entitles all the members of the ſociety to be protected and maintained by the common ſtrength in their rights and relations as members. It is underſtood, that the territory between the two rivers in diſpute, is either uninhabited, or inhabited only by ſettlers under the Britiſh. If this be ſo, it obviates all ſhadow of difficulty on our ſide. But be it as it may, it would be an abuſe of the rule to oppoſe it to the amicable adjuſtment of an ancient controverſy, about the title of a particular tract of country, depending on a queſtion of fact, whether this or that river be the one truly intended by former treaties between the parties. The queſtion is not in the caſe—ſhall we cede a part of our country to another power? It is this—to whom does this tract of country truly belong? Should the weight of evidence be on the Britiſh ſide, our faith pledged by treaty, would demand from us an acquieſcence in their claim. Not being able to agree in opinion on this point, it was moſt equitable and moſt agreeable to good faith to ſubmit it to an impartial arbitration.

It has been aſked among other things, whether the United States were competent to the adjuſtment of the matter without the ſpecial conſent of the ſtate of Maſſachuſetts. Reſerving a more particular ſolution of this queſtion to a ſeparate diſcuſſion of the conſtitutionality of the treaty, I ſhall content myſelf with remarking here, that our treaty of peace with Great-Britain, by ſettling the boundaries of the United States without the ſpecial conſent or authority of any ſtate, aſſumes the principle, that the government of the United States was of itſelf competent to the regulation of boundary with foreign powers—that the actual government of the Union has even more plenary authority, with regard to treaties, than was poſſeſſed under the confederation, and that acts, both of the former and of the preſent government, preſuppoſe the competency of the national authority to decide the queſtion in the very inſtance under conſideration. I am informed alſo, that the ſtate of Maſſachuſetts has, by repeated acts manifeſted a correſponding ſenſe on the ſubject.

A reflection not unimportant occurs here. It was perhaps, in another ſenſe than has been hitherto noticed, a point of prudence in both governments to refer the matter in diſpute to arbitration. If one had yielded to the pretenſions of the other, it could hardly have failed to draw upon itſelf complaints, and cenſures, more or leſs extenſive, from quarters immediately intereſted or affected.

CAMILLUS.

Richmond, October 8, 1795.

THOMAS CARNEAL.

DOLLARS, to be paid on his being convicted of the crime. and delivering him up to juſtice, a further reward of FIFTY DOLLARS for each of the horſes, beſid s a reaſonable allowance for feeding them; and for apprehending the thief, DAVID KOATS in this City, ſhall receive a reward of TEN

remarkably well. Whoever delivers the ſaid horſes at Mr. are both high ſtripped and ſpotted, trots, paces, and gallops

ſhe of his right fore leg, a little below his knee. They are very large with a perceivable knot on the bone of the in-

two above the others, but the letters forgotten, his feet Horſe is plainly branded on the near buttock with 4 letters,

both of his hind feet white, both long tails; the large half high; the other 15 hands, a blade darker, with one or

being each other: The large Horſe about 15 hands and a with white hairs, very much reſem-

each with a ſmall blaze, intermixed

STOLEN laſt night

out of THOMAS ELLIOTT's ſtable, in this City, a pair of

BAY HORSES,

CATCH THE THIEF!

THE New-Kent JOCKY CLUB RACES will commence on the LAST Thurſday in this month, the 29th; four mile heats the firſt day: Premium fifty guineas, free for any horſe, mare, or gelding, carrying the following weights:

An aged horſe,		130 lbs.
A 6 years old	do.	120 do.
5 do.	do.	110 do.
4 do.	do.	100 do.
3 do.	do.	86 do.

Publiſhed by order of the Club.

New-Kent Courthouſe, October 8, 1795.

☞ NOTICE!

THAT a PETITION will be preſented to the next General Aſſembly, praying that ſome compenſation be made to Benjamin Putney, for Proviſions and Services rendered during the late war.

BENJAMIN PUTNEY.

Auguſt 19, 1795.

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